

HOUSE No. 870

By Mr. Vallee of Franklin, petition of James E. Vallee and others relative to medical malpractice claims. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

James E. Vallee	Todd M. Smola
Susan W. Pope	Brian Paul Golden
Vincent A. Pedone	Frank I. Smizik
Paul C. Casey	

In the Year Two Thousand and Five.

AN ACT RELATIVE TO PATIENT CARE ACCESS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 175 of the Massachusetts General Laws
2 is hereby amended by the addition of the following new section:
3 Section 193 V: Every insurer or risk management organization
4 which provides insurance to a physician licensed under
5 Chapter 112 of the Massachusetts General Laws shall make an
6 annual report to the Betsy Lehman Center for Patient Safety and
7 Medical Error Reduction established by Chapter 177 of the Acts
8 of 2001. Said report shall list the top ten categories of losses,
9 claims or actions for damage for personal injuries alleged to have
10 been caused by error, omission or negligence in the performance
11 by physicians of medical services the company incurred during
12 the previous calendar year. Said report shall also identify the top
13 ten defendant specialties as to cost and frequency of cases in the
14 prior year. Where applicable, organizations shall include reports
15 outlining losses and claims for non-physician health care
16 providers as well. Reports shall include completed cases and set-
17 tlements only and shall include no information identifying
18 providers or patients. Reports shall be provided to the center at its
19 request under annual timelines and reporting requirements estab-

20 lished by the center with the input of the advisory committee
21 established in Chapter 6A Section 16 E (C). The Center shall use
22 this information in the development of evidence-based best prac-
23 tices to reduce medical errors and enhance patient safety as
24 required by Chapter 6A Section 16 E (e) 1 to increase awareness
25 of error prevention strategies through public and professional edu-
26 cation as required by Chapter 6A Section 16 E (e) 4.

1 SECTION 2. Section 60G of Chapter 231 of the General Laws,
2 as appearing in 2002 Official Edition, is hereby amended by
3 striking out in lines 10 and 11 the following: “prior to the judg-
4 ment” and adding in lines 12 and 27 after the word “compensated”
5 the following: , replaceable, compensable or indemnifiable,.

1 SECTION 3. Chapter 231 of the General Laws is hereby
2 amended by adding after section 60J, the following new section:
3 Section 60K. In any action for malpractice, error or mistake
4 against a provider of health licensed pursuant to section 2 of
5 Chapter 112, including actions pursuant to section 60B of this
6 Chapter, an expert witness shall be board certified in the same
7 specialty as the defendant licensed pursuant to section 2 of
8 Chapter 112.

1 SECTION 4. Chapter 231 of the General Laws is hereby
2 amended by adding after section 60K, the following new section:
3 Section 60L. In every action for malpractice, negligence, error,
4 omission, mistake or the unauthorized rendering of professional
5 services against a provider of health care where the court shall, at
6 the request of either party, (a) Enter a judgment ordering that
7 money damages or its equivalent for future damages of the judg-
8 ment creditor be paid in whole or in part by periodic payments
9 rather than by a lump-sum payment if the award equals or exceeds
10 fifty thousand dollars (\$50,000) in future damages. In entering a
11 judgment ordering of the payment of future damages by periodic
12 payments, the court shall make a specific finding as to the dollar
13 amount of periodic payments which will compensate the judgment
14 creditor for such future damages, the court shall require the defen-
15 dant who is not adequately insured to post security adequate to
16 assure full payment of such damages awarded by the judgment.

17 Upon termination of periodic payments of future damages, the
18 court shall order the return of this security, or so much as remains,
19 to the defendant.

20 (b)(1) The judgment ordering the payment of future damages
21 by periodic payments shall specify the recipient or recipients of
22 the payments, the dollar amount of the payments, the interval
23 between payments, and the number of payments or the period of
24 time over which payments shall be made. Such payments shall
25 only be subject to modification in the event of the death of the
26 judgment creditor.

27 (2) In the event that the court finds that the defendant has
28 exhibited a continuing pattern of failing to make the payments, as
29 specified in paragraph (1), the court shall find the defendant in
30 contempt of court and, in addition to the required periodic pay-
31 ments, shall order the defendant to pay the plaintiff all damages
32 caused by the failure to make such periodic payments, including
33 court costs and attorney's fees.

34 (c) However, money damages awarded for loss of future earn-
35 ings shall not be reduced or payments terminated by reason of the
36 death of the plaintiff, but shall be paid to persons to whom the
37 plaintiff owed a duty of support, as provided by law, immediately
38 prior to his death. In such cases the court which rendered the
39 original judgment, may, upon petition of any party in interest,
40 modify the judgment to award and apportion the unpaid future
41 damages in accordance with this subdivision.

42 (d) Following the occurrence or expiration of all obligations
43 specified in the periodic payment judgment, any obligation of the
44 defendant to make future payments shall cease and any security
45 given, pursuant to section (a) shall revert to the defendant.

1 SECTION 5. Said chapter 231 is hereby amended by inserting
2 after section 60L the following section:—

3 Section 60M. In any action for malpractice, negligence, error,
4 omission, mistake or unauthorized rendering of professional serv-
5 ices against a provider of health care, in which a verdict is ren-
6 dered or a finding made or an order for judgment made for
7 pecuniary damages for personal injuries to the plaintiff or for con-
8 sequential damages, there shall be added by the clerk of the court
9 to the amount of damages interest thereon, at a rate to be deter-

10 mined as set forth below rather than the rate specified in
11 section 6B of chapter 231, from the date of the commencement of
12 the action even though such interest brings the amount of the ver-
13 dict or finding beyond the maximum liability imposed by law. For
14 all judgments entered after the effective date of this act, the rate of
15 interest to be applied by the clerk shall be at a rate equal to the
16 weekly average 1-year constant maturity Treasury yield, as pub-
17 lished by the Board of Governors of the Federal Reserve System
18 for the calendar week preceding the date of judgment. At no point
19 shall the rate of interest established by this section exceed the rate
20 of interest set forth in said section 6B of chapter 231.

1 SECTION 6. Chapter 231 of the General Laws is hereby
2 amended by adding the following section:

3 Section 60N. In any action for malpractice, error, omission,
4 mistake or the unauthorized rendering of professional services
5 against a provider of health care, the liability of each defendant
6 for damages shall be several only and shall not be joint. Each
7 defendant shall be liable only for the amount of damages allocated
8 to that defendant in direct proportion to that defendant's per-
9 centage of fault, and a separate judgment shall be rendered against
10 that defendant for that amount.